Environmental Liability Directive

and the links with Environmental Crime Directive

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Topics

- What is environmental damage?
- Who is liable?
- What are the remedies?
Environmental damage

- Significant damage
  - same meaning in ELD and ECD?
    - Damage to species and habitats
    - Habitat and Bird Directives
    - Damage to water
    - Water Framework Directive
Damage in ELD and in ECD

- Damage to land
  - Significant risk for human health

- Damage to air?
  - No repair
  - Only punishment (ECD): danger to health?

- Damage to health, life, goods
  - No repair in ELD: tort law
  - Only ECD
Liable person

- ECD: offender (operator, employee, common citizen)
  - Unlawful behavior
  - Intent or severe negligence

- ELD: operator
  - Dangerous activities: strict liability with defences
  - Not dangerous activities: negligence
Defences

Defences to costs or defences to liability?
– Mandatory defences:
  - Authority order defence
  - Third party defence
– Optional defences:
  - Permit defence
  - State of art defence
Remedial measures

- Specific performance
  - Primary remediation
    - Return to baseline
  - Complementary remediation
    - By way of equivalent measures
  - Compensatory remediation
    - for interim losses
      - of services for public (pure economic losses?)

- No repair of damage: crime?